

SENATE BILL NO. 252

INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE PROHIBITION ON CONSIDERATION OF MARITAL MISCONDUCT IN DIVIDING PROPERTY IN A PROCEEDING FOR A DISSOLUTION OF MARRIAGE OR A LEGAL SEPARATION; AND AMENDING SECTION 40-4-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-202, MCA, is amended to read:

"40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, ~~without regard to marital misconduct,~~ shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

- (a) the nonmonetary contribution of a homemaker;
- (b) the extent to which such contributions have facilitated the maintenance of this property; and
- (c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside

1 a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support,
2 maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

3 (3) Each spouse is considered to have a common ownership in marital property that vests immediately
4 preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must
5 be determined and made final by the court pursuant to this section.

6 (4) The division and apportionment of marital property caused by or incident to a decree of dissolution,
7 a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or
8 dealing in property but is a division of the common ownership of the parties for purposes of:

9 (a) the property laws of this state;

10 (b) the income tax laws of this state; and

11 (c) the federal income tax laws.

12 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6."

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